IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 14941 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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PANKAJ RAMESHCHANDRA KAKANI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AR GUPTA for Applicant(s) : 1,
MR KP RAVAL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR KV SHELAT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 20/06/2007

ORAL JUDGMENT

1.0 By way of this application, the applicant has prayed to quash and set aside the order of the learned Metropolitan Magistrate, Court No.2, Ahmedabad dated 09.11.2006 passed below discharge application being Criminal Case No. 1532 of 2004 (Old. No. 2856 of 2001)as well as the aforesaid criminal case.

2.0 The brief facts of the case are that in pursuance of filing of an FIR No.71 of 2001 by respondent No.2 against the accused persons including the present applicant for the offence punishable under Sections 406, 420, 323, 294(b), 506(2), 467 and 474, a Criminal Case No. 1532 of 2004 (Old. No. 2856 of 2001)came to be registered.

2.1 The case of the applicant is that he is not named in the FIR and that at the relevant point of time he was pursuing his studies and was also working with M/s. Ranbaxy Laboratories Ltd. The further say of the applicant is that he has been falsely roped in the complaint in question only on the ground that he, occasionally, used to help his father in his business. The applicant, therefore, preferred discharge application which was came to be rejected by the learned Metropolitan Magistrate vide impugned order dated 09.11.2006. Hence, the present application.

3.0 Heard learned Counsel for the parties and perused the documents placed on record. From the record it appears that the applicant, at the relevant point of time, was pursuing his studies and during his spare time, he used to help his father in his business i.e. on instructions from his father, the applicant used to collect goods.

3.1 The case of the complainant is that on the day of alleged incident, the applicant along with his servant went to transport office and received goods in question. In support of the same, the complainant has placed reliance on receipts signed by the applicant towards acceptance of goods. From the record it also transpires that that the said goods were purchased by giving false Sales Tax numbers. Therefore, the question as to whether at the time of accepting the goods in question, the applicant had any knowledge about the activities of his father i.e. purchasing of goods by giving false Sales Tax numbers or not is a matter of

investigation. Hence, if the averments made in the complaint are read as it is, prima facie it cannot be said that no offence is committed. Apart from that it is reported that the charge-sheet, in connection with the offence in question, has been filed against the applicant. Therefore, it would not be appropriate for this Court to interfere at this stage.

3.2 In view of the above facts and circumstances, the reliance placed on by the learned Advocate for the applicant on the decisions of the Apex Court in the case of ***"Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors."*** reported in (1998)5 SCC 749, ***"G. Sagar Suri & Anr. Vs. State of U.P. & Ors."*** reported in 2000 (2) GLH 191 and in the case of ***"S.G. Munia Vs. State of Gujarat & Anr."*** reported in 2002(3)GLR 2508 shall not apply in the case on hand. The application, hence, deserves to be dismissed.

4.0 The application stands dismissed accordingly. Notice is discharged.

(M.D. Shah, J.)

Umesh/